

Kevin Wine, *Pro Se*
345 Lancaster Court
Piscataway, NJ 08854
201-401-6129
kwine@optonline.net
Plaintiff

KEVIN WINE, on behalf of himself and all others similarly situated,

Plaintiff,
vs.

SOCIETY HILL AT PISCATAWAY
CONDOMINIUM ASSOCIATION, INC.,
BOARD OF TRUSTEES OF SOCIETY
HILL AT PISCATAWAY
CONDOMINIUM ASSOCIATION, INC.,
JOHN DOES 1-10, and ABC CORPS 1-10

Defendants.

SUPERIOR COURT OF NEW
JERSEY CHANCERY DIVISION,
GENERAL EQUITY PART,
MIDDLESEX COUNTY

Civil Action:

DOCKET NO. MID-C-000204-25

CERTIFICATION IN OPPOSITION TO MOTION

I, Kevin Wine, am the Plaintiff in the above-captioned matter. I hereby enter my objection to the Motion seeking to confirm the November 2025 Election of the Society Hill at Piscataway Condominium Association, Inc, pursuant to N.J.S.A. 15A:5-23, filed by Defendant as a Motion for Clarification.

STATEMENT OF UNDISPUTED MATERIAL FACTS

1. Admit.
2. Admit.
3. Admit only that Exhibit B is a copy of the original un-amended Bylaws.
4. Admit in part, denied in part. Denied that the Association was managed by First Services Residential for all of 2025. Admit that Susan Radom was employed as general corporate legal counsel.

1 5. Admit only that Section 3.09 of the Bylaws were amended as described.

2 6. Admit only that Defendant distributed Opt-In Form in Exhibit D.

3 7. Admit in part, denied in part. Denied that Exhibit F Minutes are relevant to this

4 allegation. Admit the remaining allegations.

5 8. Admit in part, denied in part. Denied that the eventually chosen Election Inspectors

6 were disinterested. Denied that the inspectors only "...would verify and certify the

7 validity of proxies and ballots, monitor the process for impartiality and fairness..."

8 Admit the remaining allegations.

9 9. Admit in part, denied in part. Denied that the named inspectors only served as

10 described in ¶8 and as described in Exhibit G. Admit the remaining allegations.

11 10. Admit.

12 11. Admit in part, denied in part. Denied that the "notice advised that there would be

13 three seats elected, two for a three-year term and one for a two-year term." Admit the

14 remaining allegations.

15 12. Admit.

16 13. Admit.

17 14. Admit.

18 15. Admit in part, denied in part. Denied that Mr. Lack of Simply Voting was the

19 original source of the sub totals of electronic and paper ballots. Admit the remaining

20 allegations.

21 16. Admit in part, denied in part. Denied that only Mr. Wine communicated with the

22 Board protesting the election. Denied that Mr. Wine appeared after the published

23 time for the meeting. Admit the remaining allegations.

24

1 17. Admit.

2 18. Admit.

3 19. Admit in part, denied in part. Denied that Mr. Wine “...did not appear until after that

4 time..” on November 5, 2025. Admit only that his uncounted votes would have

5 changed which candidate who received the two-year term.

6 20. Admit in part, denied in part. Denied that the Association would incur significant

7 expense to hold another election. Denied that “...it would be disruptive as to the

8 actions which have been taken by the Board, or which will need to be taken in the

9 time period between the proposed new election.” Denied that “Mr. Wine is asking for

10 relief that has little to do with the issues of the November 5 election...” Denied that

11 “...he is requesting in essence the removal of board members...” Admit only that the

12 requested relief is punitive in nature to the board members that directly participated in

13 or supported the ultra vires actions of the board. Denied that the statutes and

14 regulations prohibit the requested relief.

15 **COUNTER STATEMENT OF FACTS IN OPPOSITION TO THE**

16 **ASSOCIATION’S STATEMENT OF FACTS**

17 21. Plaintiff repeats the responses and factual allegations of his Verified Complaint

18 (“Pl.’s Comp.”) as if set forth more fully herein.

19 22. The Association’s contract with First Service Residential started June 1, 2025, for a

20 3-year term.

21 23. Counsel Susan Radom (the “Past Counsel”) was counsel to the Association up until

22 December 31, 2025.

23 24. The March 19, 2024 amendment to the Association Bylaws replaced entirely section

24 3.02, entitled “Annual Meeting”, to delete various language, insert “absentee ballot”

1 to be synonymous with proxy, and essentially left intact the language relating to
2 proxy voting, the revoking of proxies, and superseding of proxies. See Defendant's
3 Motion for Clarification ("Def.'s Mot.") Exhibit B and Exhibit C.

4 25. The amendment to section 3.02 implied that members may participate in the Annual
5 meeting by submitting only a proxy, or by submitting only an absentee ballot, or by
6 submitting both a proxy and an absentee ballot.

7 26. The March 19, 2024 amendment to the Association Bylaws modified section 3.09 to
8 decrease the annual meeting quorum requirement subsequent to each adjournment
9 due to lack of quorum, and to count absentee ballots towards a quorum.

10 27. The March 19, 2024 amendment to the Association Bylaws did not amend Section
11 3.10 of the Association Bylaws, entitled "Proxies", the language of which read
12 "Votes may be cast either in person or by proxy.", thus creating a contradiction
13 between section 3.10 and the amended sections 3.02 and 3.09.

14 28. The March 19, 2024 amendment to the Association Bylaws made no mention of
15 electronic voting.

16 29. None of the other amendments to the Association Bylaws made any mention of
17 electronic voting.

18 30. The electronic voting service used by the Association for the 2025 Annual Meeting
19 did not have the capability of allowing members to revoke their absentee ballot as
20 required by the amended language in section 3.02 of the Bylaws.

21 31. The legal argument in the email from Past Counsel regarding the validity of
22 electronic voting in Defendant's Association was not shared with Plaintiff prior to its
23 inclusion as Def.'s Mot. Exhibit E in this litigation.

24

1 32. Plaintiff was never provided with a written opinion from Past Counsel regarding the
2 Board's decision to not distribute a corrected copy of the paper ballot. No such
3 opinion is attached to Def.'s Mot. Plaintiff and at least trustee Anthony Blanco were
4 not invited to the conference with Past Counsel when the issue was discussed and the
5 Board's decision was essentially made by a sub-set of the Board and Management.

6 33. The motions in the minutes attached as Def.'s Mot. Exhibit F bare no relevance to the
7 subject matter of retaining Simply Voting, Inc. to conduct the electronic voting in the
8 2025 Annual Meeting.

9 34. The last four pages of Def.'s Mot. Exhibit F have nothing to do with electronic voting
10 and appear to instead be copies of a vendor's proposal for irrigation system repairs.

11 35. The "Call for Election Inspectors" in Def.'s Mot. Exhibit G assigns a role to the
12 inspectors entirely separate from the ballot counters, yet it was witnessed by Plaintiff
13 at the Annual Meeting and Election on November 5, 2025 that multiple inspectors
14 were in fact tallying ballots, with evidence of one such case in Pl.'s Comp. Exhibit X.

15 36. At least 3 of the "non-partial and diverse group of volunteers" who were acting as
16 election inspectors and/or ballot counters are known by Plaintiff to not be supportive
17 of Plaintiff, his positions, and candidates associated with Plaintiff.

18 37. The July 17, 2025 "Call for Nomination/Call for Candidates" in Def.'s Mot. Exhibit I
19 stated "There will be two (3) seats available on the Board of Trustees each of which
20 will be for a three (3) year term.", while the August 19, 2025 notice of the Annual
21 Election Meeting in Def.'s Mot. Exhibit J stated "Two positions are for a three-year
22 (3) term and One Position is a two-year term."

23

24

1 38. The July 17, 2025 “Nomination / Candidate Profile Form” in Def.’s Mot. Exhibit I
2 contained the language “...in nomination for the Board of Trustees of Society Hill at
3 Somerset II Condominium Association.”

4 39. The August 19, 2025 notice of the Annual Election Meeting also included a copy of
5 the proxy form, but only for members voting by paper.

6 40. The sub total of electronic and paper ballots in Def.’s Mot. Exhibit M is an exact copy
7 of the sub total Plaintiff wrote and posted on his website.

8 41. Candidate Vincent Marchitto attempted to communicate his concerns over the 2025
9 Annual Meeting and Election to the First Service Residential property manager Sonia
10 Danquah (the “Management”), but during the interaction was asked to leave the
11 Association office, the police were called, and another letter written by Past Counsel
12 was sent to Mr. Marchitto. The Management relayed the encounter to the Board in an
13 email dated August 26, 2025. See Pl.’s Comp. Exhibit S at 3, thus making the Board
14 aware that at least one other candidate complained about the election, at least prior to
15 November 5, 2025.

16 42. Plaintiff arrived at the November 5, 2025 Annual Meeting and Election
17 approximately 20 minutes before the publicly announced start time of 7:00 PM. See
18 Pl.’s Comp. ¶66.

19 43. Plaintiff was also denied the right to vote 4 additional proxies that were discovered by
20 the inspectors and/or ballot counters well after the 7:00 PM start time, in spite of
21 Plaintiff being physically present for the entire meeting.

22 44. Plaintiff was led to believe by Management at the October 21, 2025 adjournment of
23 the 2025 Annual Meeting and Election that showing up slightly before the official
24

7:00 PM Annual Meeting start time would be sufficient to guarantee that his ballot and proxies would be counted. Plaintiff was never advised that it was necessary to be present when the ballot counting started at 5:30PM.

45. Upon arrival at the November 5, 2025 Annual Meeting and Election, Plaintiff signed his name and wrote the time on the meeting sign-in sheet.

46. Plaintiff is not asking the Court to remove any trustees from the Board. Plaintiff is asking the Court to order a “recall election”, in which the offending trustees would have the opportunity to be nominated and run as candidates, and continue to participate as trustees at least until the recall election concluded.

47. The four trustees named were either directly involved in or complicit in the very deliberate and intentional decision to not send a corrected copy of the ballot to the 375 members voting on paper, in spite of an offer by First Service Residential to do the mailing for free, and when in fact a mailing was already going to be sent with all 7 candidate profiles, and then either directly involved in or complicit in the attempt to hide their decisions from the general membership, and the threat to retaliate against Plaintiff for exposing their actions to the membership.

48. No old Board members left the Board as a result of the 2025 elections. The net change was only that one new member joined the Board.

49. The relief sought has everything to do with the November 5, 2025 election, and the
13 separate violations of state election regulations and the Bylaws as previously
enumerated in Pl.'s Comp. and brief.

1 21. The relief requested by Plaintiff is fully within the authority of the Court under
2 N.J.S.A. 15A:5-23 which permits the Court to "...confirm the election, order a new
3 election or provide all other relief as justice may require."

4 **LEGAL ARGUMENT**

5 Defendant challenges the following:

6 a. Plaintiff's standing beyond his disqualified ballot/proxies.
7 b. the injunctive relief standard and thresholds.
8 c. the scope of relief appropriate under N.J.S.A. 15A:5-23.
9 d. the applicability of the business judgement rule.
10 e. the validity of electronic voting.
11 f. the validity of Plaintiff's vote and proxies.

12 **Plaintiff's Standing Extends Beyond His Improperly Disqualified Ballot and**
13 **Proxies**

14 Defendant claims that Plaintiff's only harm was being denied his right to vote in person
15 at the November 5, 2025 Annual Meeting and Election, that the relief should therefore be
16 constrained to address only this harm, and all other harms suffered by the loosing candidates
17 dissolve since those candidates are not named as additional plaintiffs.

18 Multiple parties have been harmed, not just the loosing candidates. The Association as a
19 whole was harmed as a result of Defendant's multiple violations of law and state regulations
20 relating to condominium association elections. Leaving a candidate entirely off the paper
21 ballot still being used by 375 of the 545 members is not only a violation of law, it puts the
22 missing candidate at an unfair disadvantage compared to the other candidates. Every
23 candidate is entitled to full display on the ballot, and should not have to rely on additional
24 instructions and unique procedures in order for another member to cast a vote for them.

1 There is no ambiguity here, and no ambiguity in which order the candidates should appear on
2 the ballot. Both of these regulations were violated. The harm is to all the members of the
3 Association – including Plaintiff and all others similarly situated - as they were deprived of a
4 fair election and the full slate of choices.

5 As per N.J.S.A. 15A:5-23, “Any election by members may be reviewed by the Superior
6 Court in a summary manner, or otherwise, in an action brought by a member entitled to vote
7 at the election upon notice to the persons elected, the corporation and all other persons as the
8 court may direct.”

9 Plaintiff is a member of Defendant’s Association (See Pl.’s Comp. ¶1), was and still is
10 paid up on his maintenance fee assessments, and was entitled to vote in the 2025 Annual
11 Meeting and Election. N.J.S.A. 15A:5-23 does not require that Plaintiff be a candidate in the
12 election for which he is bringing suit. It is no coincidence that this complaint favors certain
13 candidates, however that favoring is incidental to Plaintiff’s claims. Plaintiff is still entitled
14 to make those claims and demand relief for harms done, irrespective of how or which
15 candidates are impacted. If the Defendant violated a law or regulation, Plaintiff is entitled to
16 seek relief demanding that violation be corrected, and if that correction changes the outcome
17 of the election, or changes the length of a candidate’s term, then so be it. The candidate need
18 not be a party to the matter, and therefore the presence of any of the other candidates as
19 plaintiffs in this matter is unnecessary and irrelevant.

20 **INJUNCTIVE RELIEF THRESHOLDS**

21 Citing the federal injunctive relief standard, Defendant claims that Plaintiff failed to meet
22 the required threshold on all four prongs. The violations of regulation and law in this case
23 are all violations of New Jersey State regulations and law, not federal law. Although federal
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1 caselaw is persuasive, it is not strictly binding on New Jersey State Courts, and instead the
2 injunctive relief prongs outlined in Crowe v. De Gioia, 179 N.J. Super. 36 (App. Div. 1981)
3 should control, which are:

- 4 1) Irreparable Harm – Plaintiff must show they will suffer immediate and irreparable
5 harm if the relief is not granted.
- 6 2) Settled Law – the underlying legal rights supporting the claim are well-settled.
- 7 3) Reasonable Probability of Success – Plaintiff must present actual evidence showing a
8 reasonable probability of ultimate success on the merits.
- 9 4) Balance of Hardships – the harm to the Plaintiff would be greater if the relief is
10 denied than the harm to the Defendant if the relief is granted.

11 There is considerable overlap between the two standards, with the exception of the
12 federal “public interest” prong, so Plaintiff will address the three prongs of overlap with
13 Crowe, as well as the public interest prong of the federal standard. Defendant does not
14 contest the “settled law” prong of Crowe.

15 **A. Plaintiff Has Established the Existence or Threat of Irreparable Harm if**
16 **Injunctive Relief is Denied.**

17 This prong is common to both standards. Under Crowe, harm is irreparable if it cannot
18 be adequately redressed by monetary damages. In the case at hand, no amount of monetary
19 compensation paid to a harmed member of the Association will cause a retroactive vote to be
20 cast for a candidate missing from the ballot, potentially changing the outcome of an election that
21 has already been concluded.

22 Defendant claims that “Plaintiff has no threat of irreparable harm...” since Plaintiff’s
23 only harm was his improperly disqualified votes. Plaintiff was harmed as a member of the
24 Association in which a defective and unfair election was conducted.

25 In N.J. Democratic Party, Inc. v. Samson, 175 N.J. 178 (2002), a candidate withdrew
26 from the race after the filing deadline and before the election, essentially guaranteeing victory to
27 the opposing candidate. The New Jersey Supreme Court held that the right to vote freely for a

1 candidate of one's choice is critical to the democratic process, and allowed the plaintiff to swap
2 in a new candidate even though the filing deadline had passed. Leaving the new substitute
3 candidate off the ballot would have caused irreparable harm to the plaintiff.

4 In Lesniak v. Budzash, 133 N.J. 1 (1993), technical defects in the nominating petitions
5 for a candidate resulted in the candidate being disqualified from the ballot. The New Jersey
6 Supreme Court ruled that the technical defects could be corrected to provide voters with a choice
7 of candidates and prevent irreparable harm to the plaintiff.

8 **B. The Harm to the Defendant is Outweighed by the Harm to the Plaintiff if the**
Injunctive Relief is Denied.

9 This prong is common to both standards. The harm to the Plaintiff if the relief is denied must
10 be greater than the harm to the Defendant if relief is granted. Defendant claims it will suffer
11 harms including instability and disruption to the continuity of the operations, and complains of
12 having to conduct an election on an expedited 45-day basis. Defendant's Certification of
13 Matthew Phillips further claims that:

14

- 15 a. the Association would incur significant expense to hold another election, and;
- 16 b. relief would be disruptive to the actions which have been taken by the board, and;
- 17 c. relief would be disruptive of the actions which will need to be taken in the time period
18 between the proposed election, and;
- 19 d. the change in Board composition at the November 5, 2025 Annual Meeting and Election
20 will exacerbate the disruption, and;
- 21 e. the relief is punitive in nature, and;
- 22 f. the relief essentially asks for the removal of board members, some of whom were not
23 candidates, and;
- 24 g. removal of trustees who were not candidates is contrary to the governing documents.

25 The harms to the Defendant, if relief is granted, are no different than the burden the
26 Association already faces when conducting its annual meeting and elections. Plaintiff will
27 address the claims of the Certification of Mr. Phillips:

1 a. The Association spent \$1,200 on the electronic voting service for the 2025 Annual
2 Meeting and Election, which could otherwise go towards an outside auditor to conduct a
3 special election if electronic voting is not permitted. The Association is billed by First
4 Service Residential for various election related expenses of an amount that is impossible
5 for Plaintiff to extract from the financial records readily available to him, but can
6 reasonably be estimated to be approximately \$3000, which could otherwise also go
7 towards an outside auditor to conduct a special election. A total election expense of
8 \$4,500 would amount to 0.2% of the Association's annual operating budget, which is
9 hardly a significant expense. The Board was presented with the opportunity by First
10 Service Residential to fully correct the ballot errors, at no charge to the Association, but
11 declined the offer, and is now complaining about the cost of doing another election.

12 b. None of the Board's decisions prior to now would be impacted by the requested relief.
13 Those decisions might be impacted for other reasons, but not related to this litigation.

14 c. None of the Board's decisions from now going forward would be impacted by the
15 requested relief. Those decisions might be impacted for other reasons, but not related to
16 this litigation. Even if relief is granted, all seven of the currently seated trustees would
17 remain seated until at least the conclusion of the requested recall election.

18 d. The change in composition to the Board was minimal, the only change being that Mr.
19 Marchitto was elected, and filled an already vacant seat. The other six trustees were the
20 same before and after the November 5, 2025 Annual Meeting and Election. Why this
21 change would be a factor in the alleged future disruption is not clear.

1 e. The relief is directed towards the trustees that participated directly in or supported the
2 ultra vires actions of the Board. It is unfortunate that some of the trustees were not the
3 main antagonists, however they supported the actions with their vote.

4 f. The relief asks for a “recall election”, which is understood to mean that the trustees who
5 are the subject of the recall are given the opportunity to run in the recall election, along
6 with any other nominated candidates, and if they win, they will keep their seats. While
7 the recall election is in progress, the trustees who are the subject of the recall remain
8 seated as fully authorized trustees. The relief is therefore not asking for the direct
9 removal of any trustees, or even the “in essence” removal of any trustees.

10 g. As per N.J.S.A. 15A:23-5, the Court “...may confirm the election, order a new election
11 or **provide all other relief as justice may require.**” (emphasis added). Thus, it is not
12 beyond the Courts authority to grant the requested relief.

13 It is not unreasonable to call an election for 45 days in the future. For the 2025 Annual
14 Meeting and Election, the initial “Call for Nominations” mailing was dated July 17, 2025,
15 announcing an annual meeting on September 16, 2025, which was 61 days from July 17th.
16 N.J.A.C. 5:26-8.9(l)(1)(i) requires that “The association shall provide written notice calling for
17 nominations to all members not fewer than 30 calendar days and not more than 60 calendar days
18 prior to mailing the election meeting notice...”, and N.J.A.C. 5:26-8.9(l)(1)(iii) requires that
19 “Following the nomination period, a notice of election shall be sent to all association members.
20 This notice shall be in writing and may be made by personal delivery, by mail, or electronically.
21 It shall be sent not fewer than 14 days and not more than 60 days prior to the date of the
22 election.” Adding the two minimum times of 30 days and 14 days together gives 44 days, so 45
23 days complies with the regulations and is only 16 days shorter than the schedule for the 2025

1 Annual Meeting and Election. The other alleged harms to the Association are either fabricated
2 or minimal.

3 On the other hand, the harm to the Plaintiff, should the relief be denied, is significantly
4 greater. Plaintiff, and all those similarly situated, will suffer the irreparable harm of an unfair
5 election in which one candidate was entirely omitted from the paper ballots used by 375 of the
6 545 members, and with the candidates listed in the improper order, and with numerous other
7 violations of N.J.A.C. 5:26. As mentioned in prong A, the courts have considered a candidate
8 missing from the ballot to be an irreparable harm to the voters. The balance of harms is therefore
9 in favor of Plaintiff.

10 **C. The Plaintiff is Likely to Prevail on the Merits.**

11 This prong is common to both standards. Defendant again claims that Plaintiff's only
12 harm is his improperly disqualified votes at the November 5, 2025 Annual Meeting and Election,
13 and since those votes, if counted, would not have changed which trustees were elected, there is
14 no claim. Defendant also argues that under N.J.S.A. 15A:5-23 there is no basis for the relief
15 requested such as ordering a new election with special election procedures, and finally that any
16 irregularities were technical or immaterial.

17 Again, Plaintiff has claims beyond just the improperly disqualified votes. Irrefutable
18 proof has been submitted in Pl.'s Comp. that Defendant failed to comply with the governing
19 documents and multiple provisions of N.J.A.C. 5:26 by omitting candidate Zahid Khan from the
20 paper ballot distributed to 375 of the 545 members; not listing the candidates in alphabetical
21 order by last name on both the electronic and paper ballot; including a unique "QR" style
22 identifier in the upper left-hand corner of every ballot that should be anonymous; including four
23 write-in slots on the ballot when there were only three seats up for election; failing to include the
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1 notice “use of the proxy is voluntary on the part of the granting owner” on the proxy form;
2 failing to include all board members in meetings of the Board; failing to notice the members
3 concerning a special meeting of the Board to ratify the Boards internal email vote to not include
4 a revised paper ballot in a new election mailing; failing to memorialize the special meeting of the
5 Board; failing to include an electronic equivalent of the proxy form for members voting
6 electronically and allow members to revoke their electronic ballot; and failing to fully amend the
7 Bylaws to permit electronic voting.

8 Plaintiff is entitled to bring a claim against the Association when its Board does not
9 adhere to the governing documents and law, regardless of which law was violated, and regardless
10 of Plaintiff’s status as a candidate in an annual election. None of the claims made by Plaintiff
11 are made directly on behalf of any particular candidate. Rather, the claims are made against the
12 ultra vires actions of the Board, which unavoidably impacts the candidates in various ways.

13 The allegedly “broad relief” being requested is appropriate and proportionate. In
14 evidence in Pl.’s Comp. is a pattern of practice whereby members of the Board have violated
15 polices, regulations, and laws in such a manner as to disadvantage certain candidates in the 2025
16 Annual Meeting and Election. The treatment of candidate Zahid Khan over the last few
17 elections, his expulsion from the Board for issues very similar to another trustee that was not
18 removed, and finally the insult of leaving him entirely off the paper ballots in 2025, and in the
19 wrong order on the ballot; the treatment of candidate Vincent Marchitto over the prior year with
20 multiple false accusations and intimidating letters from Past Counsel, and being excluded from
21 in-person attendance at the 2025 candidate night; the totally unjustified treatment of candidate
22 John Fakla and also his exclusion from the 2025 Candidate Night; the numerous and allegedly
23 innocent “technical or immaterial” mistakes in the administration of the 2025 Annual Meeting
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1 and Election, including the new rule in the 2025 election that Plaintiff was not allowed to review
2 the election documents before they were mailed to the members, any one of which taken
3 individually could be just an innocent mistake, but when taken in total raises doubt as to their
4 innocence; the refusal of the two incumbent candidate trustees to recuse themselves from voting
5 to not correct the paper ballot; and finally the Board's deliberate cover-up of their decision to
6 intentionally not correct the paper ballot, and their threat to retaliate against Plaintiff for
7 disclosing their actions to the entire membership, is all clear evidence of willful conduct for
8 which a response is warranted.

9 A line has to be drawn and a message has to be sent to discourage this and future Boards
10 from a similar coordinated attack against candidates they don't like or don't agree with. Punitive
11 damages are not possible in this case, however sending a punitive message is possible.
12 Requiring the four complicit trustees to plead their case before the members and run in a recall
13 election is a minor penalty compared to what should be their outright removal. It leaves open the
14 possibility that voting members will not be concerned with the errors and the numerous
15 violations of law and keep them on the Board. This relief also gives them the option of stepping
16 aside and running entirely different candidates if they feel they have been somehow tarnished in
17 the minds of the voting members.

18 The additional procedural relief being requested is not unreasonable. The evidence
19 clearly shows that the current Board and its Management are not very good at running an
20 election, and clearly shows that they have an interest in running it to their benefit. Given the
21 evidence, and to minimize further Court involvement in a recall election if such relief were to be
22 granted, it seems entirely reasonable to have a genuinely disinterested third-party handle the
23 election in its entirety. It is not unreasonable to expect a meeting to actually start at the publicly
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1 noticed time, and not invalidate votes of members who fail to appear at some arbitrarily
2 determined earlier meeting start time. It is not unreasonable to require the Association to open
3 and count the ballots in front of the membership, in person, and as statute requires. It is not
4 unreasonable to ask for some consistent and reliable mechanism to be in place to provide
5 replacement election forms, proxies, and ballots for members who lost their election documents
6 or never received them in the first place, or to exercise their right to supersede their proxy and/or
7 ballot with a new one. None of these demands are overly broad, unusual, or burdensome on the
8 Association.

9

10 **D. The Public Interest Supports a Grant of Temporary Restraints Under the Facts**
of this Case.

11 This prong is unique to the federal standard, which Plaintiff claims is not relevant but will
12 address it nevertheless. Defendant claims that Plaintiff failed to show “the voting rights of any
13 candidate or member were substantially impaired” or “that the confidence of the members in the
14 governance of the non-profit organization were undermined...”

15 Defendant again claims that the requested relief would result in the outright removal of
16 four members from the Board, resulting in “disruption of all action by the Board”, and that “any
17 votes that have been taken or which may be taken while the requested new election and removal
18 process will be voidable” and that this is “inconsistent with public policy.” Finally, Defendant
19 then applies the Business Judgement Rule (the “BJR”) to the Boards election related decisions
20 and determines that the BJR is protective in these circumstances.

21 Leaving a candidate entirely off the ballot, and requiring voting members to follow new
22 and unique procedures applying only to that candidate, in order to vote for that candidate, is
23 depriving members’ of their full choice of candidates, and is thus an impairment of the members’
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1 voting rights, as well as not in the public interest of providing members with a full choice of
2 candidates.

3 The requested recall election would not outright remove any trustees from the board.
4 Trustees would only end up being removed if they failed to win a seat in the recall election.
5 Therefore, the alleged disruption is nonexistent, which in turn invalidates the public policy
6 concern.

7 Defendant's BJR argument fails immediately on the first prong - "...a governing board's
8 decision will be invalidated only if (1) it is not authorized by statute or the association's
9 governing documents,..." Defendant violated multiple provisions of N.J A.C. 5:26, as outlined
10 above, meaning that the Board's actions were not authorized. The regulations require all
11 qualified candidates to be on the ballot – they weren't. The regulations require the candidates to
12 be in alphabetical order by last name – they weren't. Furthermore, these errors were brought to
13 the attention of the Board and Management on multiple occasions, and still the Board failed to
14 correct the errors, which also defeats the second prong of the BJR – "...or (2) the board's action
15 is fraudulent, self-dealing or unconscionable." Intentionally preventing the errors from being
16 corrected, which undermined the candidacy of a rival candidate, is an act of self-dealing.
17 Meeting any one of these two prongs disables BJR protection, and here Plaintiff has met both.

18 **Electronic Voting, as Currently Implemented, Is Not Permitted in**
Association Elections.

19 Defendant claims, by way of Certification of Matthew Phillips, that the Association
20 suitably complied with N.J A.C. 5:26 for electronic voting at annual meetings and elections.
21

22 The email sent to the prior management from Prior Counsel, dated February 12, 2025 and
23 attached to Def.'s Mot. as Exhibit E lays out the legal argument on which Defendant has relied to
24 enable electronic voting. This email was not shared with Plaintiff, in spite of him being on the

1 Board prior to and since February 12, 2025, and has only now become known to Plaintiff via
2 Def.'s Mot. The argument is helpful in understanding Defendant's position.

3 There remains, however, the internal conflict in the Bylaws created by the March 19,
4 2024 amendment in which section 3.10 now conflicts with section 3.02. See Plaintiff's
5 Certification in Opposition, ¶24, ¶25, and ¶27. Section 3.02 now permits voting by absentee
6 ballot without a proxy, and section 3.10 requires that voting can only be "in person or by proxy".
7 An obvious argument could be made that the intent is clear and that the neglect of section 3.10
8 was an oversight and the more recent language controls, however this should still be corrected.

9 After review of N.J.S.A. 45:22A-45, it is not clear as to the origin of the language "...If
10 the bylaws permit, and the association member consents..." in N.J.A.C. 5:26-8.9(h)4, opening
11 the possibility that it is an unjustified extension of the enabling statute, but not conclusive.

12 However, there does remain one last issue of substance regarding electronic voting. As
13 currently implemented with the electronic voting service used by the Board in the 2025 Annual
14 Meeting and Election, the electronic voting service did not allow a voting member to submit a
15 subsequent absentee ballot to replace their prior absentee ballot. The Bylaws section 3.02, as
16 amended on March 19, 2024, still contained the language "Each proxy or absentee ballot validly
17 received for the originally scheduled meeting shall remain in full force and effect for any such
18 adjourned meeting or special meeting unless it is revoked or superseded by a later proxy or
19 absentee ballot." Similar language is also found in N.J.A.C. 5:26-8.9(d)2, which states "The
20 proxy may be revoked at any time before the proxy holder casts a vote." Either the electronic
21 voting system would have to be modified to comply with the regulation, or a mechanism would
22 have to be created in which a voting member who originally signed up to vote electronically, and
23 may have already voted electronically, would have the option to supersede their electronic vote

1 with a paper vote. Thus, electronic voting as currently implemented, and as was used in the 2025
2 Annual Meeting and Election, violates the governing documents.

3 **Plaintiff's Vote and Proxies at the 2025 Annual Meeting and Election on**
4 **November 5, 2025 Are Valid and Should Be Counted**

5 In spite of the fact that including Plaintiff's disqualified vote and proxies in the vote
6 totals would not change which candidates were elected in the 2025 Annual Meeting and
7 Election, and would only change the length of some terms, and in spite of the possibility that the
8 election may be invalidated, Plaintiff would still like the court to address this claim.

9 It is absurd that a member should have to comply with arbitrarily determined meeting
10 start times prior to the officially announced time in order to exercise their right to vote in person
11 at an annual meeting. Regardless, Plaintiff attempted to comply, arriving approximately 20
12 minutes prior to the officially noticed meeting start time of 7:00 PM, and was still denied the
13 right to cast his own vote and several proxies that had been given to him by other members.
14 There is no viable justification for rejecting in-person votes prior to the announcement of the
15 election results. It should be a minimal burden on the inspectors/counters to add a few more
16 votes to the total. Allowing them maybe 10 or 15 minutes to do this, prior to the announcement
17 of the results is reasonable. Imposing an in-person voting deadline, an hour or more prior to the
18 officially noticed meeting start time, is not reasonable.

19 As a further insult, Plaintiff was not even allowed to exercise 4 additional proxies that
20 were discovered by the election inspectors/counters during the ballot counting process and after
21 7:00 PM. Plaintiff was present at the meeting from approximately 6:40 PM to its conclusion.
22 There was absolutely no justification for disqualifying those additional 4 proxies. The role of the
23 election inspectors is to count ballots and certify the election. They are operating beyond their
24 authority when ruling on other matters outside the scope of their responsibility, such as changing

1 the officially announced start time of the election, or disqualifying proxies given to a member
2 that was present in-person for the entire election.

3 To prevent a repeat of this abuse in future elections, the Court should still address this
4 claim.

5 **CONCLUSION**

6 Defendant's arguments revolve almost entirely around their assertion that Plaintiff's only
7 claim is for his improperly disqualified vote and proxies at the 2025 Annual Meeting and
8 Election, and that since none of the other harmed candidates are named as Plaintiffs, all of
9 Plaintiff's other claims dissolve. Defendant used this argument no fewer than 4 times in their
10 brief. Unfortunately for Defendant, Plaintiff and all others similarly situated still have claims
11 against Defendant for all the violations of the governing documents and N.J.A.C. 5:26 that
12 Defendant has committed. Defendant has caused irreparable harm to the Plaintiff and the entire
13 Association by allowing a non-compliant ballot to be used in the election, intentionally refusing
14 to correct the ballot errors, and then threatening to retaliate against Plaintiff for exposing their
15 attempted cover-up of their refusal. Plaintiff meets all 4 prongs of the Crowe injunctive relief
16 standard, and the federal standard, as well as both prongs in defeat of the Business Judgment
17 Rule protections. There were no reasonable grounds for invalidating Plaintiff's vote and proxies
18 at the Annual Meeting and Election and his vote and proxies should be counted. Electronic
19 voting as currently implemented does not conform to the Association's governing documents,
20 and should not be used until the deficiencies are corrected. Def.'s Mot. for Clarification, which
21 incidentally has nothing to do with any clarification and is more a motion for summary
22 judgement in disguise, should be denied, and all the requested relief in the original order to show
23 cause should be granted.

VERIFICATION

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: January 20, 2026

Kevin Wine, *Pro Se*